



**US Army Corps  
of Engineers**

Transatlantic Programs Center

# Balance of Payments, Trade Agreements, Cargo Preference Act, Base Access

## Balance of Payments Program and Trade Agreements Act/Free Trade Agreements

- Trade Agreements Act applies to construction contracts equal to or exceeding \$7,443,000
  - ❖ See FAR 25.402
- Other Free Trade Agreements have different thresholds:
  - ❖ NAFTA – Canada / Mexico: \$8,817,449
  - ❖ Chile: \$7,443,000
  - ❖ Singapore: \$7,443,000

## Balance of Payments Program and Trade Agreements Act/Free Trade Agreements

- Use only domestic construction material for construction to be performed outside the United States
  - ❖ Including end products
  - ❖ Including construction material for foreign military sales
- Acquire only domestic end products for use outside the United States

# Balance of Payments Program and Trade Agreements Act/Free Trade Agreements

- “Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work.
  - ❖ The term also includes an item brought to the site preassembled from articles, materials, or supplies.
  - ❖ Emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when/how the individual parts or components of those systems are delivered to the construction site.
  - ❖ Materials purchased directly by the Government are supplies, not construction material.

# Balance of Payments Program and Trade Agreements Act/Free Trade Agreements

- Exceptions
- The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold
  - ❖ Simplified acquisition threshold means \$100,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (Pub. L. 108-136, Title XIV, Sec. 1443), the term means—
    - \$250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and
    - \$500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

# Balance of Payments Program and Trade Agreements Act/Free Trade Agreements

## ➤ Exceptions

- The Contracting Officer determines that a requirement can best be filled by a foreign end product or construction material
- This includes determinations that:
  - ❖ A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;
  - ❖ An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

# Balance of Payments Program and Trade Agreements Act/Free Trade Agreements

## ➤ Exceptions

### ➤ Determinations continued:

- ❖ A particular domestic construction material is not available;
- ❖ The cost of domestic construction material would exceed the cost of foreign construction material by more than 50 percent, calculated on the basis of--
  - A particular construction material; or
  - The comparative cost of application of the Balance of Payments Program to the total acquisition;
- ❖ OR, Use of a particular domestic construction material is impracticable.

## Balance of Payments Program and Trade Agreements Act/Free Trade Agreements

- “Designated country construction material” means a construction material that:
- ❖ (1) Is wholly the growth, product, or manufacture of a designated country; or
  - ❖ (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the material from which it was transformed.
  - ❖ Designated countries are defined at DFARS 252.225-7045; the list is quite expansive (over 70 countries).



## Balance of Payments Program and Trade Agreements Act/Free Trade Agreements

- “Per DFARS 252.225-7045, “Free Trade Agreement country construction material” means a construction material that:
  - 1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or
  - 2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.
- ❖ “Free Trade Agreement country” means Canada, Chile, Mexico, or Singapore.

# CARGO PREFERENCE ACT

- What are the US Cargo Preference laws?
  - ❖ Cargo Preference Act of 1904
  - ❖ Requires that military cargoes be shipped exclusively on vessels of the US or belonging to the US.
  - ❖ Implemented by DOD 48 CFR Subpart 247.5 – Ocean Transportation by US flag vessels.
- DFARS 252.247-7023 Transportation of Supplies by Sea

# CARGO PREFERENCE ACT

- The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—
  - 1) U.S.-flag vessels are not available for timely shipment;
  - 2) The freight charges are inordinately excessive or unreasonable; or
  - 3) Freight charges are higher than charges to private persons for transportation of like goods.

# CARGO PREFERENCE ACT

- The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date (s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—
- 1) Type, weight, and cube of cargo;
  - 2) Required shipping date;
  - 3) Special handling and discharge requirements;
  - 4) Loading and discharge points;
  - 5) Name of shipper and consignee;
  - 6) Prime contract number; and
  - 7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

# CARGO PREFERENCE ACT

- The Contractor shall, within 30 days after each shipment, provide the Contracting Officer and the Maritime Administration (new address below), one legible copy of the rated on board vessel operating carrier's ocean bill of lading. (Note: not a Freight Forwarder's bill of lading)

US Department of Transportation  
Maritime Administration  
Office of Cargo Preference and Domestic Trade  
MAR 730, W23 – 453  
1200 New Jersey Avenue, SE  
Washington, DC 20590

# Base Access

- American Employees
  - ❖ CAC Card Required
  - ❖ Possible Additional Registration Required
  - ❖ Possible Escort Requirement
- Foreign Employees
  - ❖ Registration Required
  - ❖ Possible Escort Requirement
- Possible Entry Delays at Gate